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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/046,290

01/16/2002

Stefan Gabriel

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02-31-0352

2333

7590

04/15/2003

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EXAMINER

WEBB, SARAH K

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 04/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/046,290

Applicant(s)

GABRIEL ET AL.

Examiner

Sarah K Webb

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claim 16 is objected to because of the following informalities: "claim 14" in line 1 should be "claim 15". Appropriate correction is required.
2. Claim 23 is objected to because of the following informalities: the word "application" in line 2 should be "applicator". Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-7,11,15,17-32 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,451,030 to Li et al.

Li '030 discloses a tissue anchor insertion tool that includes a first member (4,13) and second member (6). As shown more clearly in Figure 2, the distal end of the first member (13) receives the anchor and the second member (16) *substantially* covers the anchor during insertion. One end of an applicator, or leaf spring (14), is coupled to the first member, while the other end of the spring extends into the anchor-receiving region. The spring (14) has both a straight portion and a ramped, or angled, portion at the distal end. As shown in Figure 3, the leaf spring

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(14) moves laterally when the members are moved relative to one another, and the anchor is rotated.

The second member is tubular and *substantially* surrounds the first member. The second member includes a flexor, or pin (15), that moves relative to and engages with the applicator (14). The flexor (15) is capable of laterally moving the ramped portion of the applicator upon axial movement of the second member, as the flexor applies an inward force to the ramped portion of the applicator (14) as the first member is retracted into the second member. The '030 device further includes a handle (3) that is coupled to the first member (4), as shown in Figure 1.

Regarding claims 26 – 32 directed to a method of inserting a tissue anchor, Li '030 discloses all the claimed steps in column 3. The steps include providing the insertion tool with an anchor mounted in the distal end (line 24); inserting a tissue anchor into tissue while being covered by the second member (lines 25-29); moving the second member proximally relative to the first member to expose the anchor (line 30); and lastly the applicator moves laterally to rotate the anchor (line 34).

4. Claims 1,2,7-16 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 6,102,934 to Li.

Li '934 discloses a tissue anchor insertion tool that includes a first member (14) substantially surrounded by a tubular second member (18). The distal end of the first member has two arcuate prongs (30) that define an anchor-receiving region, as most clearly shown in Figure 9.

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Regarding claims 2,7, and 8, refer to the embodiment in Figure 14 of '934. The second member (12') has a flexor in the form of a pin (43) and the first member (14') has an applicator (24'). The first member defines an opening for receiving the pin (43) so that the pin (43) engages the applicator (24') (column 11, lines 1-2). The applicator and pin move relative to one another.

Regarding claims 12-14, the pin (43) structure of the embodiment in Figure 14 can also be interpreted as a "contact" that extends *between* the first and second members. Actuation of the "contact" (43) causes relative motion between the two members (column 11, lines 2-10).

Regarding claims 15 and 16, the pin (43) structure described above also meets the limitations of a "coupling" between the handle and first member for preventing relative rotation.

*Conclusion*

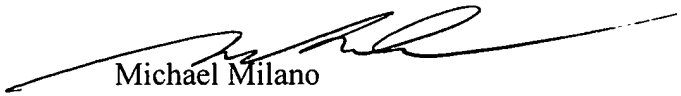
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K Webb whose telephone number is (703) 305-7554. The examiner can normally be reached on 8am-4:30pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Sarah K Webb  
Examiner  
Art Unit 3731

sw  
April 7, 2003



Michael Milano  
Supervisory Patent Examiner  
Art Unit 3731